

PREVAILED

Roll Call No. _____

FAILED

Ayes _____

WITHDRAWN

Noes _____

RULED OUT OF ORDER

HOUSE MOTION _____

MR. SPEAKER:

I move that House Bill 1670 be amended to read as follows:

- 1 Delete the title and insert the following:
- 2 A BILL FOR AN ACT to amend the Indiana Code concerning
- 3 taxation.
- 4 Page 1, between the enacting clause and line 1, begin a new
- 5 paragraph and insert:
- 6 "SECTION 1. IC 6-2.5-2.5 IS ADDED TO THE INDIANA CODE
- 7 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
- 8 JULY 1, 2010]:
- 9 **Chapter 2.5. Reduced Sales and Use Tax Rate**
- 10 **Sec. 1. (a) This chapter does not apply if the language that was**
- 11 **proposed and agreed to by the one hundred fifteenth general**
- 12 **assembly in P.L.147-2008 (SJR 1-2008) is agreed to by the one**
- 13 **hundred sixteenth general assembly before November 3, 2010.**
- 14 **Otherwise, this chapter applies beginning January 1, 2011.**
- 15 **(b) The following sections do not apply if this chapter applies:**
- 16 **IC 6-2.5-2-2**
- 17 **IC 6-2.5-6-7**
- 18 **IC 6-2.5-6-8**
- 19 **IC 6-2.5-6-10**
- 20 **IC 6-2.5-7-3**
- 21 **IC 6-2.5-7-5**
- 22 **IC 6-2.5-10-1.**
- 23 **Sec. 2. (a) The state gross retail tax is measured by the gross**
- 24 **retail income received by a retail merchant in a retail unitary**

transaction and is imposed at the following rates:

STATE	GROSS RETAIL INCOME
GROSS	FROM THE
RETAIL	RETAIL UNITARY
TAX	TRANSACTION
\$ 0	less than \$0.09
\$ 0.01	at least \$ 0.09 but less than \$0.25
\$ 0.02	at least \$ 0.25 but less than \$0.42
\$ 0.03	at least \$ 0.42 but less than \$0.59
\$ 0.04	at least \$ 0.59 but less than \$0.75
\$ 0.05	at least \$ 0.75 but less than \$0.92
\$ 0.06	at least \$ 0.92 but less than \$1.09

On a retail unitary transaction in which the gross retail income received by the retail merchant is one dollar and nine cents (\$1.09) or more, the state gross retail tax is six percent (6%) of that gross retail income.

(b) If the tax computed under subsection (a) results in a fraction of one-half cent (\$0.005) or more, the amount of the tax shall be rounded to the next additional cent.

Sec. 3. Except as otherwise provided in IC 6-2.5-6 or IC 6-2.5-7, a retail merchant shall pay to the department, for a particular reporting period, an amount equal to the product of:

- (1) six percent (6%); multiplied by
- (2) the retail merchant's total gross retail income from taxable transactions made during the reporting period.

The amount determined under this section is the retail merchant's state gross retail and use tax liability regardless of the amount of tax the retail merchant actually collects.

Sec. 4. (a) For purposes of determining the amount of state gross retail and use taxes which a retail merchant must remit under section 3 of this chapter, the retail merchant may exclude from the retail merchant's gross retail income from retail transactions made during a particular reporting period an amount equal to the product of:

- (1) the amount of that gross retail income; multiplied by
- (2) the retail merchant's "income exclusion ratio" for the tax year which contains the reporting period.

(b) A retail merchant's "income exclusion ratio" for a particular tax year equals a fraction, the numerator of which is the retail merchant's estimated total gross retail income for the tax year from unitary retail transactions that produce gross retail income of less than nine cents (\$0.09) each, and the denominator of which is the retail merchant's estimated total gross retail income for the tax year from all retail transactions.

(c) To minimize a retail merchant's record keeping requirements, the department shall prescribe a procedure for determining the retail merchant's income exclusion ratio for a tax

year, based on a period, not to exceed fifteen (15) consecutive days, during the first quarter of the retail merchant's tax year. However, the period may be changed if the change is requested by the retail merchant because of the retail merchant's peculiar accounting procedures or marketing factors. In addition, if a retail merchant has multiple sales locations or diverse types of sales, the department shall permit the retail merchant to determine the ratio on the basis of a representative sampling of the locations and types of sales.

Sec. 5. (a) To compensate retail merchants for collecting and timely remitting the state gross retail tax and the state use tax, every retail merchant, except a retail merchant referred to in subsection (c), is entitled to deduct and retain from the amount of those taxes otherwise required to be remitted under this chapter, if timely remitted, a retail merchant's collection allowance.

(b) The allowance equals a percentage of the retail merchant's state gross retail and use tax liability accrued during a calendar year, specified as follows:

(1) Eighty-three hundredths percent (0.83%), if the retail merchant's state gross retail and use tax liability accrued during the state fiscal year ending on June 30 of the immediately preceding calendar year did not exceed sixty thousand dollars (\$60,000).

(2) Six-tenths percent (0.6%), if the retail merchant's state gross retail and use tax liability accrued during the state fiscal year ending on June 30 of the immediately preceding calendar year:

(A) was greater than sixty thousand dollars (\$60,000); and

(B) did not exceed six hundred thousand dollars (\$600,000).

(3) Three-tenths percent (0.3%), if the retail merchant's state gross retail and use tax liability accrued during the state fiscal year ending on June 30 of the immediately preceding calendar year was greater than six hundred thousand dollars (\$600,000).

(c) A retail merchant described in IC 6-2.5-4-5 or IC 6-2.5-4-6 is not entitled to the allowance provided by this section.

Sec. 6. (a) With respect to the sale of gasoline that is dispensed from a metered pump, a retail merchant shall collect, for each unit of gasoline sold, state gross retail tax in an amount equal to the product, rounded to the nearest one-tenth of one cent (\$0.001), of:

(1) the price per unit before the addition of state and federal taxes; multiplied by

(2) six percent (6%).

The retail merchant shall collect the state gross retail tax prescribed in this section even if the transaction is exempt from taxation under IC 6-2.5-5.

(b) With respect to the sale of special fuel or kerosene that is

dispensed from a metered pump, unless the purchaser provides an exemption certificate in accordance with IC 6-2.5-8-8, a retail merchant shall collect, for each unit of special fuel or kerosene sold, state gross retail tax in an amount equal to the product, rounded to the nearest one-tenth of one cent (\$0.001), of:

- (1) the price per unit before the addition of state and federal taxes; multiplied by
- (2) six percent (6%).

Unless the exemption certificate is provided, the retail merchant shall collect the state gross retail tax prescribed in this section even if the transaction is exempt from taxation under IC 6-2.5-5.

Sec. 7. (a) Each retail merchant who dispenses gasoline or special fuel from a metered pump shall, in the manner prescribed in IC 6-2.5-6, report to the department the following information:

- (1) The total number of gallons of gasoline sold from a metered pump during the period covered by the report.
- (2) The total amount of money received from the sale of gasoline described in subdivision (1) during the period covered by the report.
- (3) The part of the amount described in subdivision (2) that represents state and federal taxes imposed under this article, IC 6-6-1.1, or Section 4081 of the Internal Revenue Code.
- (4) The total number of gallons of special fuel sold from a metered pump during the period covered by the report.
- (5) The total amount of money received from the sale of special fuel during the period covered by the report.
- (6) The part of the amount described in subdivision (5) that represents state and federal taxes imposed under this article, IC 6-6-2.5, or Section 4041 of the Internal Revenue Code.
- (7) The total number of gallons of E85 sold from a metered pump during the period covered by the report.

(b) Concurrently with filing the report, the retail merchant shall remit the state gross retail tax in an amount that equals five and sixty-six hundredths percent (5.66%) of the gross receipts, including state gross retail taxes but excluding Indiana and federal gasoline and special fuel taxes, received by the retail merchant from the sale of the gasoline and special fuel that is covered by the report and on which the retail merchant was required to collect state gross retail tax. The retail merchant shall remit that amount regardless of the amount of state gross retail tax that the merchant has actually collected under this chapter. However, the retail merchant is entitled to deduct and retain the amounts prescribed in subsection (c), section 5 of this chapter, and IC 6-2.5-6-11.

(c) A retail merchant is entitled to deduct from the amount of state gross retail tax required to be remitted under subsection (b) the amount determined under STEP THREE of the following formula:

STEP ONE: Determine:

- (A) the sum of the prepayment amounts made during the period covered by the retail merchant's report; minus
- (B) the sum of prepayment amounts collected by the retail merchant, in the merchant's capacity as a qualified distributor, during the period covered by the retail merchant's report.

STEP TWO: Subject to subsection (d), for reporting periods ending before July 1, 2020, determine the product of:

- (A) eighteen cents (\$0.18); multiplied by
- (B) the number of gallons of E85 sold at retail by the retail merchant during the period covered by the retail merchant's report.

STEP THREE: Add the amounts determined under STEPS ONE and TWO.

For purposes of this section, a prepayment of the gross retail tax is presumed to occur on the date on which it is invoiced.

(d) The total amount of deductions allowed under subsection (c) STEP TWO may not exceed one million dollars (\$1,000,000) for all retail merchants in all reporting periods. A retail merchant is not required to apply for an allocation of deductions under subsection (c) STEP TWO. If the department determines that the sum of:

- (1) the deductions that would otherwise be reported under subsection (c) STEP TWO for a reporting period; plus
- (2) the total amount of deductions granted under subsection (c) STEP TWO in all preceding reporting periods;

will exceed one million dollars (\$1,000,000), the department shall publish in the Indiana Register a notice that the deduction program under subsection (c) STEP TWO is terminated after the date specified in the notice and that no additional deductions will be granted for retail transactions occurring after the date specified in the notice.

Sec. 8. (a) The department shall account for all state gross retail and use taxes that it collects.

(b) The department shall deposit those collections in the following manner:

- (1) Ninety-nine and sixty-seven thousandths percent (99.067%) of the collections shall be paid into the state general fund.
- (2) Seventy-six hundredths of one percent (0.76%) of the collections shall be paid into the public mass transportation fund established by IC 8-23-3-8.
- (3) Thirty-three thousandths of one percent (0.033%) of the collections shall be deposited into the industrial rail service fund established by IC 8-3-1.7-2.
- (4) Fourteen-hundredths of one percent (0.14%) of the collections shall be deposited into the commuter rail service

1 fund established by IC 8-3-1.5-20.5.

2 **Sec. 9. (a) For purposes of this chapter, all transactions, except**
3 **the furnishing of public utility, telephone, or cable television**
4 **services and commodities by retail merchants described in**
5 **IC 6-2.5-4-5, IC 6-2.5-4-6, and IC 6-2.5-4-11 shall be considered as**
6 **having occurred after December 31, 2010, to the extent that**
7 **delivery of the property or services constituting selling at retail is**
8 **made after that date to the purchaser or to the place of delivery**
9 **designated by the purchaser. However, a transaction shall be**
10 **considered as having occurred before January 1, 2011, to the**
11 **extent that the agreement of the parties to the transaction is**
12 **entered into before January 1, 2011, and payment for the property**
13 **or services furnished in the transaction is made before January 1,**
14 **2011, notwithstanding the delivery of the property or services after**
15 **December 31, 2010.**

16 **(b) With respect to a transaction constituting the furnishing of**
17 **public utility, telephone, or cable television services and**
18 **commodities, only transactions for which the charges are collected**
19 **on original statements and billings dated after December 31, 2010,**
20 **shall be considered as having occurred after December 31, 2010."**

21 Renumber all SECTIONS consecutively.

(Reference is to HB 1670 as printed February 20, 2009.)

Representative Walorski